



Senate

\General
Assembly

File No. 340

February Session, 2012

Substitute Senate Bill No. 412

Senate, April 10, 2012

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING THE REGULATION OF EMBALMERS AND FUNERAL
SERVICE ESTABLISHMENTS AND CERTAIN PROFESSIONAL
BOARD AND COMMISSION HEARINGS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-200 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2013*):

3 (a) For the purposes of this section and sections 42-201 to 42-206c,
4 inclusive, "funeral service contract" means a contract [which] that
5 requires the payment of money or the delivery of securities in
6 exchange for the final disposition of a dead human body, including
7 funeral, burial or other services, or the furnishing of personal property
8 or funeral merchandise in connection with any such disposition,
9 wherein the use or delivery of such services, property or merchandise
10 is not required immediately and is not delivered immediately,
11 "beneficiary" means the person for whom the goods or services

12 purchased in a funeral service contract are to be provided, and
13 "purchaser" means the person who signs the funeral service contract.

14 (b) Each funeral service establishment shall provide each person
15 who inquires in person about purchasing a funeral service contract
16 with a copy of the funeral service contract fact sheet prepared by the
17 Department of Consumer Protection and shall provide each purchaser
18 with a copy of such sheet prior to the purchaser's signing of a funeral
19 service contract.

20 [(b)] (c) A funeral service contract shall be in writing and shall
21 contain the following:

22 (1) The name, address, telephone number and Social Security
23 number of the beneficiary and the purchaser;

24 (2) The name, address, telephone number and license number of the
25 funeral director for the funeral service establishment providing the
26 goods or services;

27 (3) A list of the selected goods or services, if any;

28 (4) The amount of funds paid or to be paid by the purchaser for
29 such contract, the method of payment and a description of how such
30 funds will be invested and how such investments are limited to those
31 authorized pursuant to subsection (c) of section 42-202;

32 (5) A description of any price guarantees by the funeral service
33 establishment or, if there are no such guarantees, a specific statement
34 that the contract contains no guarantees on the price of the goods or
35 services contained in the contract;

36 (6) The name and address of the escrow agent designated to hold
37 the prepaid funeral services funds;

38 (7) A written representation, in clear and conspicuous type, that the
39 purchaser should receive a notice from the escrow agent
40 acknowledging receipt of the initial deposit not later than twenty-five

41 days after receipt of such deposit by a licensed funeral director;

42 (8) A description of any fees to be paid from the escrow account to
43 the escrow agent or any third party provider;

44 (9) A description of the ability of the purchaser or the beneficiary to
45 cancel a revocable funeral service contract and the effect of cancelling
46 such contract;

47 (10) For irrevocable contracts, a description of the ability of the
48 beneficiary to transfer such contract to another funeral home; and

49 (11) The signature of the purchaser or authorized representative and
50 the licensed funeral director of the funeral service establishment.

51 [(c)] (d) A funeral service establishment shall maintain a copy of all
52 funeral service contracts entered into or assigned to such establishment
53 and a list of each escrow account established pursuant to such
54 contracts. Such list shall include the name and address of the escrow
55 agent, the amount of funds deposited with such agent and the name
56 and address of the purchaser of the funeral services contract. Such
57 contracts shall be maintained by the funeral service establishment for a
58 period of six years after the completion of the contracted services. Such
59 establishment shall disclose such information, upon request, to the
60 Commissioner of Public Health, the Commissioner of Consumer
61 Protection or the Attorney General.

62 [(d)] (e) A funeral service establishment shall notify the purchaser of
63 each prepaid funeral contract with such establishment not later than
64 ten days after any transfer of more than a fifty per cent ownership
65 share of such establishment to another person or of the closure of such
66 establishment.

67 Sec. 2. (NEW) (*Effective July 1, 2013*) (a) The Commissioner of
68 Consumer Protection shall establish and maintain the Connecticut
69 Funeral Service Contract Guaranty Fund in accordance with the
70 provisions of this section.

71 (b) The Department of Public Health shall retain ten dollars from
72 each licensing fee or renewal fee received by the department pursuant
73 to section 20-213 or 20-217 of the general statutes, and shall transfer
74 such fees quarterly to the Commissioner of Consumer Protection for
75 deposit in the guaranty fund.

76 (c) Payments received under subsection (b) of this section shall be
77 credited to the guaranty fund. Money in the fund may be invested or
78 reinvested in the same manner as funds of the state employees
79 retirement system, and the interest derived from such investments
80 shall be credited to the guaranty fund.

81 (d) If a licensed funeral service establishment fails to deposit funds
82 received from a funeral service contract in an escrow account as
83 required by section 42-202 of the general statutes and refuses to honor
84 such contract, the purchaser or beneficiary, as such terms are defined
85 in section 42-200 of the general statutes, as amended by this act, upon
86 discovery of such failure, may apply to the Commissioner of
87 Consumer Protection for payment of such claim from the guaranty
88 fund.

89 (e) Purchasers or beneficiaries with a claim shall apply for payment
90 from the guaranty fund on forms prescribed by the Commissioner of
91 Consumer Protection. The application shall include the name and
92 address of the funeral service establishment, the date the contract was
93 entered into, the price of the contract, the amount and the basis of the
94 claim and a copy of the contract or other documentation accepted by
95 the commissioner and any other information required by the
96 commissioner.

97 (f) If, after examination of the application and an initial investigation
98 of the claim, the Commissioner of Consumer Protection determines
99 there is some factual basis to the claim that funds were not deposited
100 in an escrow account as required under section 42-202 of the general
101 statutes, and the funeral service establishment has refused to honor the
102 contract, the commissioner shall hold a hearing upon such application
103 in accordance with the provisions of chapter 54 of the general statutes.

104 Notwithstanding the provisions of chapter 54 of the general statutes,
105 the decision of the commissioner shall be final with respect to the
106 application. The commissioner may hear applications of all purchasers
107 or beneficiaries submitting claims against a single funeral service
108 establishment in one proceeding.

109 (g) After notice and a hearing, if the commissioner finds in favor of
110 the purchaser or beneficiary, the commissioner shall issue an order
111 requiring payment from the guaranty fund of any sum the
112 commissioner finds to be payable upon such application.

113 (h) If the commissioner pays any amount pursuant to an order
114 under subsection (g) of this section, the commissioner shall notify the
115 Department of Public Health of such payment and such funeral service
116 establishment shall not be eligible to receive a new or renewed license
117 from the Department of Public Health until it has repaid such amount
118 in full, plus interest at a rate to be determined by the Commissioner of
119 Consumer Protection.

120 (i) If the commissioner pays any amount as a result of a claim
121 against a funeral service establishment pursuant to an order under
122 subsection (g) of this section, the commissioner shall determine if the
123 funeral service establishment is possessed of real or personal property
124 or other assets, liable to be sold or applied in satisfaction of the claim
125 on such fund. Upon discovery of any such assets, the commissioner
126 may request the Attorney General to take any action necessary for the
127 realization thereof for the reimbursement of the guaranty fund.

128 (j) The commissioner may, in order to preserve the integrity of the
129 guaranty fund, order payments to be made out of said fund for
130 amounts less than the actual loss incurred by any purchaser or
131 beneficiary of a funeral service contract.

132 (k) When the commissioner has caused any sum to be paid from the
133 guaranty fund to a purchaser or beneficiary of a funeral service
134 contract, the commissioner shall be subrogated to all of the rights of
135 the purchaser or beneficiary up to the amount paid, and the purchaser

136 or beneficiary shall assign all rights, title and interest in the claim up to
 137 such amount to the commissioner, and any amount and interest
 138 recovered by the commissioner on the claim shall be deposited to the
 139 guaranty fund.

140 (l) The commissioner may adopt regulations in accordance with
 141 chapter 54 of the general statutes to carry out the purposes of this
 142 section.

143 Sec. 3. Section 19a-10 of the general statutes is repealed and the
 144 following is substituted in lieu thereof (*Effective October 1, 2012*):

145 The boards and commissions listed in subsection (b) of section 19a-
 146 14 may conduct hearings on any matter within their statutory
 147 jurisdiction. Such hearings shall be conducted in accordance with
 148 chapter 54 and the regulations established by the Commissioner of
 149 Public Health. At least one public board or commission member and
 150 one member, who is a member of the profession regulated by such
 151 board or commission, shall preside at any such hearing. In connection
 152 with any such hearing, any member of a board or commission, upon
 153 being designated by the board or commission, may administer oaths,
 154 issue subpoenas, compel testimony and order the production of books,
 155 records and documents. If any person refuses to appear, to testify or to
 156 produce any book, record or document when so ordered, a judge of
 157 the Superior Court may make such order as may be appropriate to aid
 158 in the enforcement of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2013</i>	42-200
Sec. 2	<i>July 1, 2013</i>	New section
Sec. 3	<i>October 1, 2012</i>	19a-10

PRI Joint Favorable Subst. C/R

PH

PH Joint Favorable

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Consumer Protection, Dept.	GF - Cost	30,400	30,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	8,766	8,766
Public Health, Dept.	GF - Revenue Loss	8,700	8,700
Consumer Protection, Dept.	CFSCGF - Revenue Gain	8,700	8,700

Note: GF=General Fund; CFSCGF = Connecticut Funeral Service Contract Guaranty Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$39,166 in FY 13 and \$38,766 in FY 14 as it would require the Department of Consumer Protection (DCP) to investigate complaints related to funeral home contracts. The cost includes one part-time special investigator (\$30,000), programming costs in FY 13 (\$400) and fringe benefits (\$8,766). An estimated 28,000 people per year die in the state of Connecticut which may result in a substantial number of contract complaints.

Additionally the bill results in a General Fund revenue loss of approximately \$8,700 annually² from the diversion of \$10 from each embalmer and funeral director license fee collected by the Department of Public Health (DPH) and a corresponding revenue gain to the Connecticut Funeral Service Contract Guaranty Fund ("Guaranty Fund").

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with most personnel changes is 29.22% of payroll in FY 13 and FY 14.

² Estimate based on FY 11 data.

DPH license fees are currently deposited into the General Fund as unrestricted revenue. Under the bill, diverted funds are to be deposited into a newly established Guaranty Fund within the Department of Consumer Protection. The Guaranty Fund is established to allow purchasers or beneficiaries of a funeral service contract to apply for a payment based on a specific violation of the contract by a funeral service establishment.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

The General Fund revenue loss and Connecticut Funeral Service Contract Guaranty Fund revenue gain identified above would continue into the future subject to the number of embalmer and funeral director license fees received by DPH and any changes to these fees under CGS Sec. 20-213 and/or CGS Sec. 20-217 in the out years.

OLR Bill Analysis**sSB 412*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE REGULATION OF EMBALMERS AND FUNERAL SERVICE ESTABLISHMENTS AND CERTAIN PROFESSIONAL BOARD AND COMMISSION HEARINGS.*****SUMMARY:**

This bill requires the Department of Consumer Protection (DCP) commissioner to establish and maintain a guaranty fund to pay claims by funeral service contract purchasers or beneficiaries when funeral service establishments fail to (1) deposit contract funds in an escrow account as the law requires and (2) honor the contract. Among other things, it (1) sets procedures for claimants seeking payment from the fund; (2) requires funeral service establishments to repay amounts paid for claims against them, plus interest, before their licenses can be renewed; and (3) allows the commissioner to ask the attorney general to take needed action to sell or apply the establishment's assets to reimburse the fund.

The bill requires funeral service establishments to provide a copy of DCP's funeral service contract fact sheet to anyone who (1) inquires in person about purchasing a funeral service contract or (2) purchases such a contract, before the person signs it.

By law, the Department of Public Health's (DPH) professional boards and commissions (see BACKGROUND) may conduct hearings on any matter within their statutory jurisdiction. The hearings must comply with the Uniform Administrative Procedure Act (UAPA) and DPH regulations. The bill requires at least one public board or commission member and one member who is a member of the profession regulated by the board or commission, to preside at any

such hearing.

The bill also makes a technical change.

EFFECTIVE DATE: July 1, 2013, except for the provision on members presiding at DPH board or commission hearings, which is effective October 1, 2012.

§ 2 – FUNERAL SERVICE CONTRACT GUARANTY FUND

The bill requires the DCP commissioner to establish and maintain the Connecticut Funeral Service Contract Guaranty Fund, and allows him to adopt regulations implementing the bill's provisions related to the fund.

Fund Deposits

The bill requires DPH to transfer to the DCP commissioner, for deposit in the guaranty fund, \$10 of the fee from each embalmer or funeral director license and annual license renewal. DPH must transfer the fees quarterly. The bill allows money in the fund to be invested in the same way as funds in the State Employees Retirement System. Any interest earned on the investments must be credited to the fund.

Claims

The bill allows purchasers or beneficiaries of funeral service contracts to apply to the DCP commissioner for payment from the guaranty fund when the person discovers that the licensed funeral service establishment (1) failed to deposit funds received from the contract in an escrow account as required by law and (2) refuses to honor the contract.

Purchasers or beneficiaries making such a claim for payment from the fund must apply on forms the DCP commissioner prescribes. The application must include (1) the funeral service establishment's name and address, (2) the contract date and price, (3) the amount and basis of the claim, (4) a copy of the contract or other documentation the commissioner accepts, and (5) any other information the commissioner requires.

The bill requires the commissioner to hold a hearing on the application, if after examining the application and initially investigating the claim, he determines there is some basis to claim that the funds were not put into escrow and the establishment refused to honor the contract. A single hearing may be held for all claims against a single funeral service establishment. The bill requires the hearing to be in accordance with the UAPA, except the commissioner's decision on the application is final and not subject to appeal.

If the commissioner finds in favor of the purchaser or beneficiary after notice and a hearing, he must issue an order requiring payment from the guaranty fund of the sum he finds to be payable on the application. He must notify DPH after paying any amount pursuant to such an order. The bill allows the commissioner to order payments that are less than the actual loss the claimant incurred, to preserve the guaranty fund's integrity.

Effect of Successful Claim and Recovery of Claim Amounts

Under the bill, after the DCP commissioner pays an amount from the fund pursuant to such an order, the funeral service establishment is ineligible for a new or renewed DPH license until it fully repays the amount, plus interest. The DCP commissioner sets the interest rate.

After paying a claim from the fund, the DCP commissioner must also determine if the funeral service establishment has any real or personal property or other assets that can be sold or applied to satisfy the claim on the guaranty fund. If the commissioner discovers the establishment has such assets, he may ask the attorney general to take any necessary action to reimburse the fund from those assets.

Once the fund has paid a claimant, the person must assign to the commissioner his or her rights to recover the money. Any amount and interest the commissioner recovers on the claim must be deposited in the guaranty fund.

BACKGROUND

DPH Boards and Commissions

Professional boards and commissions within DPH include the following:

1. the Connecticut Medical Examining Board;
2. the Connecticut State Board of Examiners for Optometrists;
3. the Connecticut State Board of Examiners for Nursing;
4. the Dental Commission;
5. the Board of Examiners of Psychologists;
6. the Connecticut Board of Veterinary Medicine;
7. the Connecticut Homeopathic Medical Examining Board;
8. the Connecticut State Board of Examiners for Opticians;
9. the Connecticut State Board of Examiners for Barbers and Hairdressers and Cosmeticians;
10. the Connecticut Board of Examiners of Embalmers and Funeral Directors;
11. the State Board of Natureopathic Examiners;
12. the State Board of Chiropractic Examiners;
13. the Connecticut Board of Examiners in Podiatry;
14. the Board of Examiners of Electrologists; and
15. the Connecticut State Board of Examiners for Physical Therapists (CGS § 19a-14(b)).

Related Bill

sHB 5498, reported favorably by the Public Health Committee on March 26, 2012, allows people to pay for funeral service contracts by assigning the death benefit under a life insurance policy, and makes

other changes related to funeral service establishments.

COMMITTEE ACTION

Program Review and Investigations Committee

Joint Favorable Substitute Change of Reference

Yea 10 Nay 0 (03/16/2012)

Public Health Committee

Joint Favorable

Yea 24 Nay 0 (03/23/2012)